

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOHN MCCOY,)	Case No.: C 11-05054 PSG
)	
Plaintiff,)	ORDER DENYING DEFENDANTS'
)	MOTION FOR SANCTIONS
v.)	
)	
CCA HOLDINGS CORPORATION, ET AL.,)	(Re: Docket No. 42)
)	
Defendants.)	
)	
)	

Defendants Charter Communication, Inc. doing business as Charter Communications (CCI), Inc. and Charter Communications Properties LLC (collectively, "Defendants") move for sanctions pursuant to Fed. R. Civ. P. 11(b). Plaintiff John McCoy ("McCoy") opposes the motion.¹ Pursuant to Civ. L.R. 7-1(b), the motion is taken under submission and the hearing scheduled to be held on October 2, 2012 is vacated. Having reviewed the papers and considered the arguments of counsel,

IT IS HEREBY ORDERED that Defendants' motion for sanctions is DENIED.

¹ McCoy also seeks the reasonable attorneys' fees incurred in opposing the motion.

1 On August 16, 2011, McCoy filed a complaint alleging a claim for trespass. On February
2 24, 2012, McCoy was deposed and as part of his deposition, he was presented with an email he had
3 authored dated August 6, 2009. It states:

4 Please also note that contrary to the documents from Charter, you actually
5 never left my property in 1998 and later returned unannounced and without
6 permission to bury additional new cables on my property to serve your
customers in the two mobile home parks.

7 After the deadline for any amendments to the pleadings passed and after Defendants moved for
8 summary judgment, McCoy moved for leave to amend the complaint. Defendants contend that
9 McCoy's declaration filed in support of the motion seeking leave to amend the complaint contains
10 a false statement made under oath. In McCoy's declaration, he states:

11 After the complaint was filed in 2011, as a result of my subsequent discovery
12 and investigation, I found evidence that defendants had entered my Rosedale
13 property after the lease expired in 1998 to install, replace and upgrade
14 underground cables.

15 Defendants argue that McCoy's August 6 email and his declaration contain contradictory
16 statements and show that McCoy's claim that he only recently discovered evidence of further
17 trespass after 1998 is false. Defendants notified McCoy of the false statement contained in his
18 declaration and note that McCoy has neither withdrawn nor amended his declaration. On that basis,
19 Defendants argue that sanctions should be imposed on McCoy pursuant to Fed. R. Civ. P. 11(b).

20 McCoy responds that based on the nature of Defendants' past and ongoing trespasses onto
21 his property, the statement he made in the declaration was not false but rather clarified his
22 understanding of Defendants' ongoing acts. McCoy originally believed that Defendants' trespasses
23 ended on May 21, 2010 because they ceased any further lease negotiations with him at that time. In
24 addition, this belief was confirmed after McCoy observed Defendants removing underground
25 cables from his property. The complaint thus reflects allegations related to that end date. Only
26 earlier this year, after McCoy discovered additional evidence of Defendants' past and post-lease
27 trespasses as well as their ongoing trespasses, did he realize that Defendants subsequently installed
28

1 on his property, and are still using, cables for their subscribers at the adjacent Turner Lane Estates.
2 McCoy's proposed first amended complaint reflects the newly found evidence.


3 The court agrees with McCoy. Fed. R. Civ. P. 11(b) provides that "[b]y presenting to the
4 court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later
5 advocating it, -- an attorney or unrepresented party certifies that to the best of the person's
6 knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . .
7 . . (3) the factual contentions have evidentiary support or, if specifically so identified, will likely
8 have evidentiary support after a reasonable opportunity for further investigation or discovery."

9 While the April 6, 2009 email indicates that McCoy knew of Defendants' trespasses from 1998 to
10 2009, it does not establish that the statement he made in his declaration lacks even a likelihood of
11 evidentiary support. The declaration statement on its face is uncontradicted: after filing his
12 complaint in 2011, McCoy found evidence in the document production that cables were installed
13 after 1998. While it might have been more helpful for McCoy to have addressed the post-August
14 2010 period at issue in his motion to amend, this does not render the statement as lacking any
15 evidentiary support. Defendants' request for sanctions is denied.

16 All other relief requested is denied.

17 **IT IS SO ORDERED.**

18 Dated: 10/1/2012



PAUL S. GREWAL
United States Magistrate Judge